



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division for Air Quality

4 (Amendment)

5 401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary  
6 sources.

7 RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R.  
8 60.1-60.19, 60.40-60.316, 60.330-60.506 [~~60.40-60.506~~], 60.540-60.548, 60.560-  
9 60.566, 60.580-60.648, 60.660-60.3078, Tables 1-5, 60.4101-60.4420, Table 1 [~~60.540-~~  
10 ~~60.668~~, ~~60.680-60.4420~~], 42 U.S.C. 7411, EO 2009-538

11 STATUTORY AUTHORITY: KRS 224.10-100(5)[, ~~224.20-100~~, ~~224.20-110~~,  
12 ~~224.20-120~~], 42 U.S.C. 7411, EO 2009-538

13 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes  
14 the cabinet [~~Environmental and Public Protection Cabinet~~] to promulgate administrative  
15 regulations for the prevention, abatement, and control of air pollution. EO 2009-538,  
16 effective June 12, 2009, establishes the Energy and Environment Cabinet. This  
17 administrative regulation adopts the Standards of Performance for New Stationary  
18 Sources (NSPS) codified in 40 C.F.R. 60.1 through 60.19, 60.40 through 60.316,  
19 60.330 through 60.506, 60.540 through 60.548, 60.560 through 60.566, 60.580 through  
20 60.648, 60.660 through 60.3078, Tables 1-5, and 60.4101 through 60.4420,

1 Table 1. ~~[60.40 through 60.506, 60.540 through 60.668, and 60.680 through 60.4420.]~~  
2 Delegation of implementation and enforcement authority for the federal NSPS program  
3 from the U.S. ~~[United States]~~ Environmental Protection Agency to the Commonwealth of  
4 Kentucky is provided by ~~[under]~~ 42 U.S.C. 7411(c)(1).

5 Section 1. Definitions. (1) "Administrator" means the Secretary of the Energy and  
6 Environment ~~[Environmental and Public Protection]~~ Cabinet unless a specific provision  
7 of the Part 60 NSPS states that the U.S. ~~[United States]~~ Environmental Protection  
8 Agency retains enforcement authority.

9 (2) "Part 60 NSPS" means the Standards of Performance for New Stationary  
10 Sources codified in 40 C.F.R. 60.1 through 60.19 (Subpart A), 60.40 through 60.316  
11 (Subparts D through EE), 60.330 through 60.506 (Subparts GG through XX), 60.540  
12 through 60.548 (Subpart BBB), 60.560 through 60.566 (Subpart DDD), 60.580 through  
13 60.648 (Subparts FFF through LLL), 60.660 through 60.3078, Tables 1-5, (Subparts  
14 NNN through FFFF), and 60.4101 through 60.4420, Table 1, (Subparts HHHH through  
15 KKKK). ~~[60.40 through 60.506, 60.540 through 60.668, and 60.680 through 60.4420,~~  
16 ~~Subparts A, D through XX, BBB through NNN, and PPP through KKKK.]~~

17 Section 2. Applicability. This administrative regulation shall apply to sources  
18 subject to 40 C.F.R. 60.1 through 60.19 (Subpart A), 60.40 through 60.316 (Subparts D  
19 through EE), 60.330 through 60.506 (Subparts GG through XX), 60.540 through 60.548  
20 (Subpart BBB), 60.560 through 60.566 (Subpart DDD), 60.580 through 60.648  
21 (Subparts FFF through LLL), 60.660 through 60.3078, Tables 1-5, (Subparts NNN  
22 through FFFF), and 60.4101 through 60.4420, Table 1, (Subparts HHHH through  
23 KKKK). ~~[60.40 through 60.506, 60.540 through 60.668, and 60.880 through 60.4420,~~

1 ~~Subparts A, D through XX, BBB through NNN, and PPP through KKKK.]~~ These sources  
2 shall comply with the following:

3 (1) The applicable provisions codified in 40 C.F.R. 60.1 through 60.19 (Subpart  
4 A), "General Provisions";

5 (2) The applicable methods, procedures, and reporting requirements codified in  
6 40 C.F.R. Part 60, Appendices A through D [~~F~~] and F ; and

7 (3) The applicable Part 60 NSPS.

7/14/09  
Date

Henry C.A. List  
Henry C.A. List, Deputy Secretary  
Energy and Environment Cabinet

For Leonard K. Peters, Secretary  
Energy and Environment Cabinet

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing on this amendment will be held on August 26, 2009 at 10:00 a.m. (local time) in Conference Room 201B of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend.

The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for the transcript.

The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

If you do not wish to be heard at the hearing, you may submit written comments on the proposed amendment. Written comments will be accepted until close of business on August 31, 2009. Send written notification of intent to be heard at the hearing or written comments on the proposed amendment to the contact person.

**CONTACT PERSON:** Ty Martin, Environmental Technologist II, Division for Air Quality, 200 Fair Oaks Lane, 1<sup>st</sup> Floor, Frankfort, Kentucky 40601, phone number (502) 564-3999, fax number (502) 564-4666, and email: [ty.martin@ky.gov](mailto:ty.martin@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Administrative Regulation #:** 401 KAR 60:005

**Contact person:** Ty Martin, Environmental Technologist II

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:** This administrative regulation adopts the New Source Performance Standards for New Stationary Sources, as published in 40 C.F.R. Part 60 (Part 60 NSPS).

**(b) The necessity of this administrative regulation:** This administrative regulation is necessary in order for the Commonwealth to retain implementation and enforcement authority of the Part 60 NSPS.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.100(5) authorizes the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The Cabinet complies with this mandate by implementing and enforcing the standards and requirements of this administrative regulation.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** Sources that are subject to the federal Part 60 NSPS requirements shall comply with this administrative regulation.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

**(a) How the amendment will change this existing administrative regulation:** This administrative regulation will be amended to include 40 C.F.R. Part 60, Subpart OOO, which had previously been regulated by 401 KAR 60:670.

**(b) The necessity of the amendment to this administrative regulation:** On April 28, 2009, EPA published a revised NSPS for 40 C.F.R. Part 60, Subpart OOO, Nonmetallic Mineral Processing Plants, which had been regulated previously under 401 KAR 60:670. In order to keep Subpart OOO no less stringent than the federal standards, 401 KAR 60:670 will be repealed and the revised standard will be regulated under 401 KAR 60:005.

**(c) How the amendment conforms to the content of the authorizing statutes:** The Commonwealth is required to implement and enforce the federal Part 60 NSPS rules and standards in order to retain these authorities from the U.S. EPA.

**(d) How the amendment will assist in the effective administration of statutes:** Sources subject to the 40 C.F.R. Part 60 requirements will continue to work with the state rather than the U.S. EPA. Sources subject to Subpart OOO will now be combined in one regulation with the other Part 60 NSPS.

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation.** Facilities that are sources of air pollutants as defined in 40 C.F.R. Part 60 are subject to this administrative regulation. The Cabinet will remain as the enforcement agency for these standards.

**(4) Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:**

**(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** Regulated entities shall continue to comply with the federal Part 60 NSPS requirements and this regulation.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** Regulated entities are already subject to the federal Part 60 NSPS. There are no additional costs involved in compliance with this administrative regulation.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** Sources subject to the Part 60 NSPS will continue to work with the Commonwealth rather than the federal government. The Cabinet will no longer have to amend 401 KAR 60:670 on a routine basis in order to continue with delegation of authority.

**(5) Provide an estimate of how much it will cost to implement this administrative regulation:**

**(a) Initially:** The Cabinet will not incur any initial costs for the implementation of this administrative regulation.

**(b) On a continuing basis:**

There will be no additional continuing costs for the implementation of this administrative regulation

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** The Cabinet's current operating budget will continue to be used for the implementation and enforcement of this administrative regulation.

- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this administrative regulation.**
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.**
- (9) TIERING: Is tiering applied? (Explain why tiering was or was not used.):**  
No. Applicability and compliance requirements are not tiered beyond the federal Part 60 NSPS source categories.



## FISCAL NOTE ON LOCAL GOVERNMENT

**Administrative Regulation #:** 401 KAR 60:005

**Contact person:** Ty Martin

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No    

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation has the potential to affect any source subject to the 40 C.F.R. Part 60 standards that may be operated by state or local governments.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation.

KRS 224.10-100(5), 42 U.S.C. 7411

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the regulation is to be in effect.

- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

The proposed administrative regulation will generate no new revenue.

- (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

The proposed administrative regulation will generate no new revenue.

- (c) How much will it cost to administer this program for the first year?

Costs will be included in the Cabinet's normal day-to-day operating budget.

- (d) How much will it cost to administer this program for subsequent years?

Continuing costs will be included in the Cabinet's normal day-to-day operating budget.

**Note:** If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

**Revenues (+/-):** There is no known effect on current revenues.

**Expenditures (+/-):** There is no known effect on current expenditures.

**Other Explanation:** There is no further explanation.

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation #: 401 KAR 60:005

Contact person: Ty Martin

- 1. Federal statute or regulation constituting the federal mandate.** The federal mandate is found at 42 U.S.C. 7411(c).
- 2. State compliance standards.** The state compliance standards are found in KRS 224.10-100(5)
- 3. Minimum or uniform standards contained in the federal mandate.** 42 U.S.C. 7411 requires that the U.S. EPA promulgate federal standards of performance for new sources within certain categories as published by the administrator.
- 4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?** No. This administrative regulation is no more stringent than the federal mandate.
- 5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.** Stricter standards or requirements are not imposed.